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इस भाग में रिभन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 26th March, 1966/Chaitra 5, 1888 (Saka)

The following President's Acts are published for general information:—

THE KERALA SURCHARGE ON TAXES (AMENDMENT AND VALIDATION) ACT, 1966

NO. 2 OF 1966

Enacted by the President in the Seventeenth Year of the Republic of India.

An Act further to amend the Kerala Surcharge on Taxes Act, 1957 and to validate the levy and collection of surcharge on profession tax in certain cases.

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965, the President is pleased to enact as follows:—

1. (1) This Act may be called the Kerala Surcharge on Taxes Short title and commencement. (Amendment and Validation) Act, 1966.

(2) Section 4 shall be deemed to have come into force on the 1st day of September, 1957, and the remaining provisions of this Act shall come into force at once.

Amendment of section 2. 2. In section 2 of the Kerala Surcharge on Taxes Act, 1957 Kerala Act 11 of 1957 (hereinafter referred to as the principal Act), for the words "apply to the levy and collection of the said surcharge", the words "apply in relation to the said surcharge as they apply in relation to the income-tax or super-tax payable under the said Act" shall be substituted.

Amendment of section 3. 3. In section 3 of the principal Act,—

(i) in sub-section (1),

(a) for the words and figures "the Travancore-Cochin General Sales Tax Act, 1125 or the Madras General Sales Tax Act, 1939", wherever they occur, the words and figures "the Kerala General Sales Tax Act, 1963" shall be substituted;

(b) for the words "apply to the levy and collection of the said surcharge", the words "apply in relation to the said surcharge as they apply in relation to the tax payable under the said Act" shall be substituted;

(ii) in sub-section (2), for the words, brackets, figures and letter "in sub-section (1) of section 11 of the Travancore-Cochin General Sales Tax Act, 1125 or in sub-section (1) of section 8B of the Madras General Sales Tax Act, 1939", the words, brackets and figures "in sub-section (1) of section 22 of the Kerala General Sales Tax Act, 1963" shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Any dealer who collects the surcharge payable under sub-section (1) in contravention of the provisions of sub-section (2) shall be punishable with fine which may extend to one thousand rupees and no court below the rank of a Magistrate of the first class shall try any such offence.".

4. For section 4 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 4.

“4. The profession tax payable by a person or company whose half-yearly income is not less than one thousand and five hundred rupees to the respective local authorities under the Trivandrum City Municipal Act, the Travancore District Municipalities Act, 1116, the Cochin Municipal Act, XVIII of 1113, the Madras District Municipalities Act, 1920, the Travancore-Cochin Panchayats Act, 1950, the Madras Village Panchayats Act, 1950 or the Madras District Boards Act, 1920, shall be increased by a surcharge for the purpose of the Government at the rate of five per centum of the profession tax so payable and the local authorities concerned shall levy and collect the said surcharge along with the profession tax in the same manner as if it were a profession tax and the provisions of the law governing the levy and collection of such tax shall in all respects apply therefor:

Provided that—

(i) no surcharge on such tax shall be levied under this section where the profession tax payable by a person or company to any one of the said local authorities is two hundred and fifty rupees or more per annum; and

(ii) where the profession tax payable by a person or company to any one of the said local authorities is less than two hundred and fifty rupees per annum and such tax together with the surcharge exceeds two hundred and fifty rupees per annum, the surcharge leviable under this section shall be a sum which together with such tax amounts to two hundred and fifty rupees per annum.”.

Validation

5. (1) Notwithstanding anything contained in any judgment, decree or order of any court, where any surcharge has been levied or collected before the date of publication of this Act in the purported exercise of the powers conferred by section 4 of the principal Act as originally enacted and—

(i) in any case where the aggregate amount of such surcharge and the profession tax referred to in the said section 4 which is payable by a person or a company does not exceed the limit of two hundred and fifty rupees per annum, then, such surcharge

shall be deemed to have been validly levied or collected in accordance with law;

(ii) in any case where the aggregate amount of such surcharge and profession tax which is payable by a person or a company exceeds the limit of two hundred and fifty rupees per annum, then, that portion of the surcharge, if any, which together with such profession tax does not exceed the said limit, shall be deemed to have been validly levied or collected in accordance with law,

as if such levy or collection had been made under section 4 of the principal Act as substituted by this Act, and accordingly—

(a) no suit or other proceeding shall be maintained or continued in any court for the refund of the surcharge referred to in clause (i) or such portion of the surcharge as is referred to in clause (ii), as the case may be, which has already been paid; and

(b) no court shall enforce any decree or order in so far as it relates to the refund of such surcharge or portion, as the case may be, which has already been paid.

(2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person from claiming any refund of any surcharge paid by him in excess of the amount due from him under section 4 of the principal Act as substituted by this Act.

S. RADHA KRISHNAN,

President.

S. P. SEN-VARMA,

Secy. to the Govt. of India.

Reasons for the enactment

Section 2 of the Kerala Surcharge on Taxes Act, 1957, provides that the agricultural income-tax payable under the Agricultural Income Tax Act, 1950, shall be increased by a surcharge and that the provisions of the Agricultural Income Tax Act, 1950, shall apply to the levy and collection of the said surcharge. Section 3 of the Kerala Surcharge on Taxes Act, 1957, contains a similar provision for the levy of surcharge on sales tax. It is felt that the existing provisions, namely, the provisions of the Agricultural Income Tax Act, 1950 or the General Sales Tax law shall apply to the levy and collection of the surcharge, may not be sufficient to make the provisions of the Agricultural Income Tax Act, 1950 or the General Sales Tax law relating to appeals, revisions, references, penalties and compounding of offences applicable for the levy and collection of the surcharge. It is, therefore, considered necessary to make the intention clear.

2. According to sub-section (2) of section 3 of the Kerala Surcharge on Taxes Act, 1957, a dealer is not entitled to collect the surcharge payable by him under sub-section (1) of the said section. It is not possible to impose penalty for making such collection by the application of the provisions of the General Sales Tax law, since under that law collection of tax by registered dealers is allowed. It is, therefore, considered necessary to make a provision for the punishment of dealers who collect the surcharge.

3. In its judgment dated 24th September, 1963, in O.P. No. 1342 of 1962, the Kerala High Court has struck down section 4 of the Kerala Surcharge on Taxes Act, 1957, on the ground that it contravenes clause (2) of article 276 of the Constitution. In the light of the judgment, it is considered necessary to amend section 4 of the Act so as to provide that the profession tax on persons and companies and the surcharge shall not exceed two hundred and fifty rupees per annum, the limit specified in clause (2) of article 276 of the Constitution. It is also considered necessary to give retrospective effect to the amendment from the 1st September, 1957, the date on which the Kerala Surcharge on Taxes Act, 1957, came into force.

4. In view of the judgment referred to, the levy and collection of surcharge on profession tax on persons and companies already made have been rendered invalid. It is considered necessary to validate

the levy and collection of such surcharge, subject to the limit specified in clause (2) of article 276 of the Constitution.

5. The present enactment is intended to achieve the above objects.

6. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965 (12 of 1965), has approved the enactment of this measure as a President's Act.

P. GOVINDAN NAIR,

*Secretary to the Government of India
Ministry of Finance.*

THE KERALA UNIVERSITY (AMENDMENT) ACT, 1966

No. 3 OF 1966

Enacted by the President in the Seventeenth Year of the Republic of India.

An Act to amend the Kerala University Act, 1957

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965, the President is pleased to enact as follows:—

12 of 1965.

Short title. 1. This Act may be called the Kerala University (Amendment) Act, 1966.

Amendment of section 10. 2. In section 10 of the Kerala University Act, 1957 (hereinafter referred to as the principal Act),—

Kerala Act XIV of 1957.

(i) in sub-section (1), the following shall be added at the end, namely:—

“and if the special committee fails to submit a panel of three names before the expiry of the term of office of the Vice-Chancellor, another special committee consisting of three new members, one elected by the Senate, one elected by the Syndicate and the third nominated by the Chancellor, shall, within three months of its constitution, make a unani-

mous recommendation of a person for appointment as Vice-Chancellor and the Chancellor shall appoint such person as Vice-Chancellor; and in case the committee is unable to recommend a name unanimously, it shall submit, within the said period of three months, a panel of three names to the Chancellor who shall appoint one from among the panel as Vice-Chancellor";

(ii) in sub-section (3), the following proviso shall be added at the end, namely:—

"Provided that the Vice-Chancellor shall, notwithstanding the expiration of his term of office, continue to hold office until his successor is appointed by the Chancellor.".

Kerala Ordinance I of 1966. 3. (1) The Kerala University (Amendment) Ordinance, 1966, **Repeal and savings.** is hereby repealed.

(2) Notwithstanding such repeal,—

(a) any appointment made under the principal Act as amended by the said Ordinance shall be deemed to have been made in accordance with law and shall continue for the period for which it has been made; and

(b) any other action or thing taken or done under the principal Act as amended by the said Ordinance shall be deemed to have been validly taken or done under the principal Act as amended by this Act, as if this Act had commenced on the 28th day of January, 1966.

S. RADHAKRISHNAN,
President.

S. P. SEN-VARMA,
Secy. to the Govt. of India.

Reasons for the enactment

According to section 10 (1) of the Kerala University Act, 1957 the Vice-Chancellor shall be appointed by the Chancellor on the unanimous recommendation of a special committee consisting of three members, one elected by the Senate, one elected by the Syndicate and one nominated by the Chancellor. In case the committee is unable to recommend a name unanimously, the Vice-Chancellor shall be appointed by the Chancellor from among a panel of three names submitted to him by the special committee. The term of office of the Vice-Chancellor was due to expire on the 28th of January, 1966. With a view to appointing a successor to the Vice-Chancellor, a special committee was therefore constituted under the aforesaid section but the committee was unable either to make a unanimous recommendation of a name for the office of the Vice-Chancellor or to submit a panel of three names before the expiry of the term of the Vice-Chancellor, namely, the 28th January, 1966.

2. Since the Act does not contain any provision for filling up the vacancy in the office of the Vice-Chancellor except on the unanimous recommendation of, or from a panel of three names submitted by, the special committee and since there was no provision allowing the Vice-Chancellor to continue in office till a successor was appointed, it became imperative to provide for an alternative method of appointing the Vice-Chancellor, particularly as there was a deadlock created by the disagreement among the members of the special committee.

3. It was therefore considered necessary that the Kerala University Act should be amended so as to enable the Chancellor to appoint the Vice-Chancellor in such contingencies and also to provide for continuance in office of a Vice-Chancellor after the expiry of his term of office till his successor is appointed. As there was no time to get the necessary legislation enacted by the President and as Parliament was not in session, the Governor was pleased to promulgate the Kerala University (Amendment) Ordinance, 1966, for the purpose on the 28th January, 1966.

4. As a permanent measure, however, it is felt that the needs of the situation will be met if provision is made for constituting another special committee consisting of three new members, nomi-

nated or elected, as the case may be, by the Chancellor, the Senate and the Syndicate with the same functions as the first special committee and it is required to make recommendation to the Chancellor within a period of three months of its constitution. There should also be provision for the Vice-Chancellor continuing in office until his successor is appointed. The present enactment replaces the Ordinance with the modification referred to above.

5. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965 (12 of 1965) has been consulted before the enactment of this measure as a President's Act.

G. K. CHANDIRAMANI,
*Additional Secretary to the Govt. of India,
Ministry of Education.*

